

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CLIPPERCREEK, INC., a California corporation,

No. 2:19-cv-01341 WBS KJN

Plaintiff,

V.

INTELLIGRATED SYSTEMS, LLC, a Delaware limited liability; HONEYWELL INTERNATIONAL, INC., a Delaware corporation, DEPOSCO, INC., a Georgia corporation, and DOES 1 through 50, inclusive,

ORDER RE: DEFENDANTS' MOTIONS
TO DISMISS AND MOTIONS TO
TRANSFER VENUE

Defendant.

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Plaintiff Clippercreek, Inc. ("Clippercreek") brings this action against defendants Intelligrated Systems, LLC ("Intelligrated"), Honeywell International, Inc. ("Honeywell"), Deposco, Inc. ("Deposco"), and Does 1 through 50, alleging that defendants fraudulently induced plaintiff into a contract for specialized custom technology and subsequently failed to perform

1 their obligations under the agreement. Before the court are
2 defendants' motions to dismiss, or, in the alternative, to
3 transfer venue. (Docket Nos. 29, 30).

4 I. Factual Allegations and Procedural Background

5 Clippercreek manufactures and sells electric vehicle
6 charging stations. (Compl. ¶ 19.) Honeywell purchased
7 Intelligegrated in 2016. (Compl. ¶ 20.) In late 2017 to early
8 2018, Honeywell partnered with Deposco to sell integrated
9 warehouse management solutions, order management solutions, and
10 material handing solutions to Clippercreek. (Compl. ¶ 23.)
11 Defendants toured Clippercreek's headquarters to study
12 plaintiff's manufacturing process. (Compl. ¶ 24.) Defendants
13 then held a series of marketing and sales meetings where they
14 represented that defendants could design an automated system that
15 could be integrated into Clippercreek's manufacturing, material
16 management, and internet sales systems. (Compl. ¶ 25.)

17 The parties subsequently entered into a contract
18 consisting of three documents: (1) the Master Technology
19 Agreement ("MTA"), (2) the Sales Agreement, and (3) the
20 Intelligegrated Proposal FQ-18-51002. (Compl. ¶¶ 28-30.) The MTA
21 included a forum-selection clause. (Compl. Ex. 1, at 13, ¶
22 18.2.) The clause requires the parties to bring any action under
23 the agreement in the Southern District of Ohio. (*Id.*) Pursuant
24 to the contract, plaintiff paid defendants a deposit. (Compl. ¶
25 40.)

26 Prior to and after signing the contract, defendants
27 assured plaintiff that defendants' product would integrate
28 Clippercreek's manufacturing requirements. (Compl. ¶¶ 33, 35,

1 38.) For example, after the contract was signed, defendants
2 assured plaintiff that the system would have the ability to auto-
3 generate serial labels. (Compl. ¶ 37.) When Deposco sent its
4 engineers to Clippercreek's headquarters to integrate the
5 technology, however, the engineers told plaintiff that the system
6 would not be able to perform some of the "essential requirements
7 for manufacturing." (Compl. ¶ 45.) Two days after Deposco sent
8 its engineers to plaintiff's headquarters, Clippercreek notified
9 defendants of its immediate rescission of the contract. (Compl.
10 ¶ 52). Plaintiffs demanded a return of the deposit, but
11 defendants refused to comply with the demand. (Compl. ¶¶ 52,
12 56.)

13 Plaintiff then filed this action alleging the following
14 six claims under California state law: (1) rescission by mutual
15 and/or unilateral mistake, (2) rescission by lack of
16 consideration, (3) rescission by fraud, (4) negligent
17 misrepresentation, (5) breach of contract, and (6) unfair
18 competition, pursuant to California Business & Professions Code §
19 17200 et seq. Defendants now move to dismiss the complaint under
20 Federal Rule of Civil Procedure 12(b)(6), or, in the alternative,
21 transfer the case to the Southern District of Ohio, pursuant to
22 28 U.S.C. § 1404(a), in accordance with the agreement's forum-
23 selection clause.¹

24 II. Validity of Forum-Selection Clause

25 ¹ Plaintiff filed its Opposition to each motion one day
26 after the deadline of December 30, 2019. (Docket Nos. 33, 34.)
27 Defendants request for the court to construe plaintiff's delay as
28 a non-opposition to defendants' motions. (Docket Nos. 36, 37.)
A one-day delay does not prejudice defendants, so the court will
consider the plaintiff's opposition.

1 Forum selection clauses "are presumptively valid" and
2 "should be honored 'absent some compelling and countervailing
3 reason.'" Murphy v. Schneider Nat'l, Inc., 362 F.3d 1133, 1140
4 (9th Cir. 2004) (quoting M/S Bremen v. Zapata Off-Shore Co., 407
5 U.S. 1, 12 (1972)); see also Atl. Marine Const. Co. v. U.S. Dist.
6 Court for W. Dist. of Texas, 571 U.S. 49, 63 (2013) ("[A] valid
7 forum-selection clause [should be] given controlling weight in
8 all but the most exceptional cases."). The party opposing the
9 enforcement of a forum selection clause has the "heavy burden" of
10 showing that it is "'unreasonable' under the circumstances."
11 Bremen, 407 U.S. at 10, 18. A forum selection clause is
12 unreasonable under three circumstances: "(1) 'if the inclusion of
13 the clause in the agreement was the product of fraud or
14 overreaching'; (2) 'if the party wishing to repudiate the clause
15 would effectively be deprived of his day in court were the clause
16 enforced'; [or] (3) 'if enforcement would contravene a strong
17 public policy of the forum in which suit is brought.'" Murphy,
18 362 F.3d at 1140 (quoting Richards v. Lloyd's of London, 135 F.3d
19 1289, 1294 (9th Cir.1998)).

20 Plaintiff does not contend that enforcement of the
21 clause would contravene California public policy. The court
22 therefore evaluates only the first two exceptions to the
23 enforcement of forum-selection clauses.

1. Fraud and Overreaching

25 Plaintiff argues that “[t]he [complaint] makes a strong
26 showing that . . . the MTA containing the forum-selection clause
27 . . . was affected by fraud, undue influence and a huge
28 differential in bargaining power.” (Pl.’s Opp. to Mot. to

1 Dismiss at 14 (Docket No. 33).)

2 Plaintiff's allegations are insufficient to decline
3 enforcement of the forum-selection clause on the grounds of
4 fraud. "For a party to escape a forum selection clause on the
5 grounds of fraud, it must show that 'the inclusion of that clause
6 in the contract was the product of fraud or coercion.'"

7 Richards, 135 F.3d at 1297 (quoting Scherk v. Alberto-Culver Co.,
8 417 U.S. 506, 518 (1974)). To do so, a party "must show that the
9 inclusion of the clause itself into the agreement was improper;
10 it is insufficient to allege that the agreement as a whole was
11 improperly procured." Mahoney v. Depuy Orthopaedics, Inc., No.
12 2:7-cv-1321 AWI SMS, 2007 WL 3341389, at *7 (E.D. Cal. Nov. 8,
13 2007); see also Scherk, 417 U.S. at 519 n. 14 (The fraud
14 exception in Bremen "does not mean that any time a dispute
15 arising out of a transaction is based upon an allegation of fraud
16 . . . the clause is unenforceable."); Richards, 135 F.3d at 1297
17 ("[S]imply alleging that one was duped into the signing of the
18 contract is not enough.").

19 Here, the complaint alleges that defendant fraudulently
20 induced plaintiff into signing the MTA. The complaint does not,
21 however, allege that defendant fraudulently introduced the forum-
22 selection clause into the agreement. Indeed, the complaint does
23 not even mention the forum-selection clause. Plaintiff therefore
24 cannot avoid enforcement of the clause on the grounds of fraud.
25 Cf. Richards, 135 F.3d at 1297 (finding that a forum-selection
26 clause was not the product of fraud where plaintiff made "no
27 allegations as to the inclusion of the choice clauses
28 themselves").

1 Moreover, “[t]he Ninth Circuit has made it clear that
2 neither power differential between the parties or the non-
3 negotiability of a contract are sufficient to invalidate a forum
4 selection clause.” E. & J. Gallo Winery v. Andina Licores S.A.,
5 440 F. Supp. 2d 1115, 1126 (E.D. Cal. 2006) (Ishii, J.) (citing
6 Murphy, 362 F.3d at 1141). Accordingly, the exception to the
7 enforcement of a forum-selection clause for fraud and
8 overreaching does not apply here.

9 2. Deprivation of Day in Court

10 To avoid enforcement of a forum selection clause for
11 deprivation of day in court, “trial in the contractual forum
12 [must] be so gravely difficult and inconvenient that [the
13 plaintiff] will for all practical purposes be deprived of his day
14 in court.” Bremen, 407 U.S. at 18. The Ninth Circuit has held
15 that a plaintiff’s “physical and financial limitations” could
16 show such a deprivation. Murphy, 362 F.3d at 1143. Allegations
17 of such limitations, including allegations related to “travel
18 costs, availability of counsel . . . , location of witnesses, or
19 [plaintiff’s] ability to bear such costs and inconvenience” must
20 be “specific.” Spradlin v. Lear Siegler Mgmt. Servs. Co., 926
21 F.2d 865, 869 (9th Cir. 1991).

22 Plaintiff argues that litigation in the Southern
23 District of Ohio is unreasonable because (1) the single owner of
24 Clippercreek would have to travel “thousands of miles” for trial,
25 (2) the cost for witnesses to travel would be “prohibitive,” (3)
26 subpoena power under Federal Rule of Civil Procedure 45(c) (1) (A)
27 would not reach “essential” witnesses, (4) plaintiff “would not
28 be able to show the trier of fact Plaintiff’s manufacturing and

1 production site in Auburn, CA," and (5) some of plaintiffs'
2 claims (e.g., violation of California's unfair competition law)
3 are not available in Ohio. (Pl.'s Opp. to
4 Honeywell/Intelligrated Mot. to Dismiss at 14.). The court
5 considers each in turn.

6 Plaintiff's first two allegations related to the
7 ability to travel are not sufficiently specific for the court to
8 find that enforcement of the clause would deprive plaintiff of
9 its day in court. In Murphy v. Schneider National, Inc., the
10 Ninth Circuit evaluated a forum-selection clause in an employment
11 contract that required plaintiff, a resident of Oregon, to
12 litigate all claims under the contract in Wisconsin. 362 F.3d at
13 1142-43. The court found that plaintiff's "financial troubles
14 and physical limitations would bar him from litigating his claim"
15 in Wisconsin. Id. at 1143. The plaintiff in Murphy submitted an
16 affidavit wherein plaintiff disclosed in detail his income,
17 outstanding bills, and credit card debt. Id. at 1142. He also
18 detailed his physical injuries that "prevent[ed] him from sitting
19 in a position of limited mobility for more than one hour" and
20 "impair[ed] his ability to drive." Id. The Murphy plaintiff
21 also explained why his wife would not be able to drive him to
22 Wisconsin. Id. Taken together, the court found that enforcement
23 of the clause would deprive plaintiff of his day in court. Here,
24 by contrast, plaintiff Clippercreek merely states that the trip
25 would be long, and the costs would be "prohibitive." Such
26 allegations are not sufficiently specific to conclude that
27 plaintiff would not be able to litigate in Ohio.

28 Plaintiff's allegations about the inability to subpoena

1 essential witnesses are similarly conclusory. Plaintiff does not
2 identify who these witnesses are or where they are located. See
3 Spradlin, 926 F.2d 865, 869 (9th Cir. 1991). Importantly,
4 plaintiff does not allege that those witnesses must be physically
5 present for plaintiff to pursue the action. Cf. Argueta v. Banco
6 Mexicano, S.A., 87 F.3d 320, 327 (9th Cir. 1996) ("[E]ven if
7 [plaintiff]'s fear of returning to Mexico is genuine, [plaintiff]
8 do[es] not provide any information showing that [plaintiff]'s
9 physical presence in Mexico is required to pursue the civil
10 action.").

11 Plaintiff's assertion that transferring the action to
12 Ohio would prevent plaintiff from showing the jury plaintiff's
13 manufacturing site is likewise insufficient. The evidence that
14 would be presented in California and Ohio would be the same:
15 plaintiff can rely on experts and pictures to fully describe the
16 site. Further, the court is not aware of any authority requiring
17 a jury field trip for a plaintiff to pursue litigation, and, at
18 any rate, this court is unlikely to consider such an option if
19 requested.

20 Finally, plaintiff's allegation that plaintiff would
21 not be able to pursue numerous causes of action in Ohio also does
22 not establish that plaintiff would be deprived of their day in
23 court. The prescribed forum need not be identical to plaintiff's
24 preferred forum -- it need only provide plaintiff with "a
25 meaningful day in court." Pelleport Inv'rs, Inc. v. Budco
26 Quality Theatres, Inc., 741 F.2d 273, 281 (9th Cir. 1984); id. at
27 325. Plaintiff could bring breach of contract or negligence
28 claims that may entitle plaintiff to relief similar to that

1 sought in California.² Because plaintiff has failed to carry the
2 "heavy burden of showing that the trial in [Ohio] would be so
3 difficult and inconvenient that [plaintiff] would effectively be
4 denied a meaningful day in court," the court finds that the
5 forum-selection clause at issue is enforceable.

6 III. Motion to Transfer Venue

7 In deciding a § 1404(a) motion to transfer pursuant to
8 a forum-selection clause, "a district court may consider
9 arguments about public-interest factors only." Atl. Marine, 571
10 U.S. at 64. The Supreme Court has made it clear that the
11 "plaintiff's choice of forum merits no weight." Id. Instead,
12 plaintiff must "establish[] that transfer to the forum for which
13 the parties bargained is unwarranted." Id. at 63. Further, when
14 a plaintiff has agreed to a forum-selection clause, he may not
15 "challenge the preselected forum as inconvenient or less
16 convenient for themselves or their witnesses, or for their
17 pursuit of the litigation." Id. Because the Supreme Court has
18 so limited a party's ability to challenge a forum-selection
19 clause, district courts may deny enforcement of the clause only
20 in "unusual cases." Id.

21 Plaintiff does not offer reasons additional to those
22 above for the court to deny the transfer of this action to the
23 Southern District of Ohio. The Supreme Court's decision in
24 Atlantic Marine explicitly forecloses consideration of all of
25 plaintiff's arguments because all relate to the convenience of

26 ² The MTA includes a choice-of-law provision that
27 mandates the application of Ohio state law. (Compl. Ex. 1, at
28 13, ¶ 18.2.) Plaintiff has not provided any reason why the laws
of Ohio would deprive plaintiff of all possible relief.

1 the forum and none concern the public interest. See 571 U.S. at
2 581-583. Accordingly, the court will enforce the forum selection
3 clause and transfer the action.

4 The court declines defendants' invitation to dismiss
5 the action pursuant to Federal Rule of Civil Procedure 12(b) (3).
6 (Mot. to Dismiss at 6-7 (Docket No. 30).) Rule 12(b) (3) permits
7 the court to dismiss a case based on improper venue. "[A] forum-
8 selection clause does not render venue in a court 'wrong' or
9 'improper' within the meaning of . . . Rule 12(b) (3)." Atl.
10 Marine, 571 U.S. at 59. Rule 12(b) (3) therefore "[is] not [a]
11 proper mechanism[] to enforce a forum-selection clause." Id. at
12 61.

13 The appropriate vehicle to enforce the clause at issue
14 is § 1404(a). The Supreme Court held that the only "appropriate
15 enforcement mechanisms" are § 1404(a) and the forum non
16 conveniens doctrine. Id. Section 1404(a) applies where, as is
17 the case here, the forum-selection clause points to another
18 federal court. Id. at 60.

19 When considering a § 1404(a) motion involving a valid
20 forum-selection clause, the "district court should ordinarily
21 transfer the case to the forum specified in that clause." Id. at
22 62. "Only under extraordinary circumstances . . . should a §
23 1404(a) motion be denied." Id. The court has concluded that
24 such circumstances do not exist here. Accordingly, transfer, and
25 not dismissal, is proper.

26 IT IS THEREFORE ORDERED that defendants' motions to
27 transfer venue (Docket Nos. 29, 30) be, and the same hereby are,
28

1 GRANTED.³

2 This action is hereby TRANSFERRED to the United States
3 District Court for the Southern District of Ohio.

4 Dated: January 14, 2020



5 WILLIAM B. SHUBB

6 UNITED STATES DISTRICT JUDGE

27 ³ Because the court has chosen to transfer the case, the
28 court does not reach defendants' Rule 12(b) (6) challenges to the
sufficiency of the complaint.